neither is the food, which probably could be got cheaper elsewhere. The object is a repast in surroundings that to people having limited powers of conversation or disliking the rival noise, give a luxurious pleasure not to be had from eating a silent meal." In addition to the principal point involved, it is possible to conclude the courts' opinion as to two other matters. In the first place, it is not the wages of the musician that makes the performance one for profit, but rather the purpose for which his employer engages him. Thus if a band is hired by a public-spirited citizen to play in a park, the latter would not be guilty of an infringement of copyrighted music played. The court also intimates that it would distinguish between a performance for profit and an eleemosynary one. For instance, a performance by a church choir would probably be considered an eleemosynary one one rather than one for profit even if the music increased the attendance and in that manner swelled contributions. The principal case is a valuable one in the interpretation of this clause of the COPYRIGHT ACT, both as to the point actually decided and as to the other conclusions which may fairly be drawn from the opinion.

CORPORATIONS—EFFECT OF DECISION OF DIRECTORS AND SHAREHOLDERS IN DETERMINING WHETHER THEIR ACT IS WITHIN THE EXPRESS OR IMPLIED POWERS OF THE CORPORATION.—The board of directors of defendant bank had entered into a contract with defendant X, who had for many years been president of the institution, by which they paid him $50,000, in return for which he relinquished claims under the pension system of the bank and agreed, on his resignation, not to engage in the banking business with any other bank in the city for a certain period of time. Plaintiff, owning less than 1% of the shares of the bank, brings the present equitable action to have this contract set aside. *Held,* that while the action of the directors and shareholders (who had both affirmed the pension plan) had no legal weight in determining the construction of the express powers of a corporation, their judgment, while not conclusive, is entitled to consideration in determining whether a given action is within the implied powers of the corporation, and that shareholders of a national bank have incidental power to create a pension fund for the benefit of officers and employees. *Heinz* v. *National Bank of Commerce,* 237 Fed. 942, (C. C. A. 1916).

The authorities cited for this doctrine are MORSE, BANKS AND BANKING, §54; 1 MACHEN, MODERN LAW OF CORPORATIONS, §§67, 87-90; THOMPSON, CORPORATIONS, (2nd ed.), §§2100-2129. The sections cited in MORSE and THOMPSON, neither in the text nor in the cases cited, give any *direct* support to the doctrine advanced in the instant case. Nor, we submit, does the *text* in MACHEN. The last named author does, however, give an effective discussion of the power of a corporation to dispense gratuities to its servants, and in the English cases cited by the author we find ample authority for the doctrine of the instant case. Thus in *Atty.-Gen.* v. *Great Eastern Ry.,* 11 Ch. D. 480, JAMES, L. J., says: "The majority of managing partners may be trusted, and ought to be trusted, in determining for themselves what they may do and to what extent they may go in matters directly connected with, or arising out

of, their business relations with others." In *Hampson* v. *Price's Patent Candle Co.*, 45 L. J. Ch. 437, where it was decided that a bonus profit-sharing scheme approved by directors' and shareholders' meeting of manufacturing corporation was intra vires, JESSEL, M. R., says: "He [the judge] ought to consider that the manager and directors of the corporation whose business it is, and who ought to know how to conduct the business to the most advantage, ought to be allowed to judge whether what is about to be done is advantageous and reasonable or not." So in *Henderson* v. *Bank of Australasia*, 40 Ch. D. 170, which is almost on all fours with the instant case, in that gratuity to family of bank manager who had been killed in accident was sustained by the court as sound business policy and within the province of the board of directors, the preceding cases were cited and approved by NORTH, J., who also distinguished *Hutton* v. *West Cork Ry. Co.*, 23 Ch. D. 654, because the gratuities in that case were on the *dissolution* of the company. *In re Irish Provident Assurance Co.*, [1913], 1 Ir. R. 352, is a modern case along the same line. There seem to be no other American cases which *expressly* recognize the doctrine of the instant case, though it seems in accord with the general trend of decisions in this country and may be said to be tacitly recognized in the consideration *actually* given to the superior knowledge naturally possessed by directors concerning the conduct of the business of the corporation.

CORPORATIONS—REFUSAL TO ACCEPT ARTICLES OF INCORPORATION BECAUSE OF UNCERTAINTY IN EVALUATION OF PATENTS AS CONSIDERATION FOR STOCK.—$64,050 worth of the shares of the M. Calculator Co. were issued for patents controlling the special machine the corporation was incorporated to manufacture and sell. Under § 6, Art. 12, of the Constitution of Texas no shares of a corporation shall be issued except for "money paid, labor done, or property actually received," and under Arts. 1126-1128 of Vernon's Sayles' Civil Statutes it is provided that 50% of the stock of the corporation shall be paid in, that the property given for the stock shall be described and evaluated and the description and evaluation sworn to by the incorporators, and that if the affidavits accompanying the articles fail to satisfy the Secretary of State he may refuse to "receive, file and record" such articles until satisfactory evidence be forthcoming. In the instant case the Secretary of State had refused to receive the articles on the ground that the evidence of the value of the patent rights was unsatisfactory as part of the requisite 50% paid up stock; plaintiffs, applicants for the corporate charter, bring mandamus to compel the acceptance of the articles. *Held*, that it was within the discretion of the Secretary of State to refuse to receive the articles. *Beach et al.* v. *McKay*, (Tex. 1917), 191 S. W. 557.

It was contended by the Secretary of State in this case that patent rights are never property which can be "actually received" within the terms of the Constitution. The court did not consider it necessary to pass on that point, finding sufficient legal ground to hold against the relators in the uncertain character of the value of any patent right and lack of power in the court to compel a discretional act by a state officer. The case is interesting, however, in that many states, including Michigan, have similar requirements to those